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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

MICROSOFT CORPORATION,

and

ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 23-cv-02880-JSC

[PROPOSED] ORDER GRANTING NON-PARTY NINTENDO OF AMERICA INC. STATEMENT PURSUANT TO LOCAL RULE 79-5(f) AS TO WHY ITS CONFIDENTIAL INFORMATION IN DKT. NO. 309 (FEDERAL TRADE COMMISSION FINAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW) SHOULD REMAIN UNDER SEAL

[PROPOSED] ORDER

Having considered Nintendo of America Inc.'s ("NOA") Statement Pursuant to Civil Local Rule 79-5(f) As to Why Its Confidential Information in Dkt. No. 309 (Federal Trade Commission Final Proposed Findings of Fact and Conclusions of Law) Should Remain Under Seal, the Court ORDERS that the below designated portions remain redacted and kept under seal.

Para.	Page	NOA's Position on Sealing
¶74	24	The information in this redaction summarizes confidential discussions between Activision and Nintendo. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraph 9, filed on June 21, 2023.
¶82	26, at the portion in quotation marks.	The information in this redaction discusses non-public specifications regarding the Nintendo Switch. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraph 5 and 13, filed on June 21, 2023.
¶84	26	The information in this redaction discloses Nintendo's specific market strategy. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraph 13, filed on June 21, 2023.
¶85	26	The information in this redaction discloses Nintendo's specific market strategy. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraph 13, filed on June 21, 2023.
¶95	28	The cited exhibit is a sensitive and confidential that NOA has previously sought to seal entirely. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraphs 6 and 7, filed on June 21, 2023.
¶304	63	The information in this redaction is a summary of internal NOA commissioned demographic data. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraphs 6, filed on June 21, 2023.

Para.	Page	NOA's Position on Sealing
¶308	64	The information in this redaction misstates the cited exhibit, and public disclosure would result in a false impression that Nintendo internally supports the misstatement. False information about Nintendo would result in competitive, reputational, and economic harm. Given the immense public scrutiny of these proceedings, any unsealed information is likely to be widely disseminated.
¶309	64	The cited exhibit is a sensitive and confidential that NOA has previously sought to seal entirely. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraphs 6 and 7, filed on June 21, 2023.
¶315	65	The information in this redaction mischaracterizes the cited exhibit and public disclosure would result in a false impression that Nintendo internally supports the mischaracterization. False information about Nintendo would result in competitive, reputational, and economic harm. Given the immense public scrutiny of these proceedings, any unsealed information is likely to be widely disseminated.
¶328	67	The information in this redaction is a summary of, and is derived from, Nintendo's confidential business data and reveals market share information compared directly against its competitors. Public disclosure would allow insight into Nintendo's market position, resulting in competitive harm.
¶329	68	The information in this redaction is a summary of, and is derived from, Nintendo's confidential business data and reveals market share information compared directly against its competitors. Public disclosure would allow insight into Nintendo's market position, resulting in competitive harm.
¶705	146, after the word "because".	While reserving all rights as to the underlying document(s), NOA seeks to seal only the portion of this statement, starting after the word "because" and running through the end of the sentence. The information in this redaction contains details confidential discussions between Nintendo and Activision. Specifically, the information would reveal Nintendo's position as related to confidential third-party business negotiations. The harm that would occur absent sealing was further discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraph 13, filed on June 21, 2023.

Para.	Page	NOA's Position on Sealing
¶706	146-147	The information in this redaction contains details of confidential discussions between Nintendo and Activision relating to game content, a topic Nintendo considers highly sensitive. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 219) at page 3-4, Category 2, filed on June 26, 2023.
¶708	147	The information in this redaction is likely to result in competitive and economic harm as it discusses extremely sensitive and confidential information discussed between the highest-ranking executives of Nintendo and Activision. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 219) at page 3, Category 1, filed on June 26, 2023.
¶756	155	The information in this redaction discusses confidential negotiations with Microsoft. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 219) at page 4, Category 5, filed on June 26, 2023.
¶758	155	This information in this redaction reveals confidential business terms of a non-public contractual agreement between Nintendo and Microsoft. Public disclosure would result in competitive harm as competitors could use such information to Nintendo's detriment in future business dealings or in the competitive gaming market.
¶759	155	This information in this redaction reveals confidential business terms of a non-public contractual agreement between Nintendo and Microsoft. Public disclosure would result in competitive harm as competitors could use such information to Nintendo's detriment in future business dealings or in the competitive gaming market. The harm that would occur absent sealing was further discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 219) at page 4-5, Category 6, filed on June 26, 2023.
¶760	155	This information in this redaction reveals confidential business terms of a non-public contractual agreement between Nintendo and Microsoft. Public disclosure would result in competitive harm as competitors could use such information to Nintendo's detriment in future business dealings or in the competitive gaming market.
¶761	155	The information in this redaction discusses non-public specifications regarding the Nintendo Switch. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) at paragraph 5, filed on June 21, 2023.

Para.	Page	NOA's Position on Sealing
¶764	156	The information in this redaction discusses confidential negotiations with Microsoft. The harm that would occur absent sealing was discussed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 219) at page 4, Category 5, filed on June 26, 2023.

IT IS SO ORDERED.

Dated: _____

HON. JACQUELINE SCOTT CORLEY
United States District Judge